

Introduced by Senator Calderon

February 19, 2010

An act to amend ~~Section 1063.75~~ *Sections 10113.2 and 10113.3* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as amended, Calderon. Insurance: ~~Guarantee Association~~. *life settlements.*

Existing law prohibits a person from entering into, brokering, or soliciting life settlements, as defined, unless that person is licensed by the Insurance Commissioner. The applicant for a license is required to provide any information the commissioner may require.

This bill would delete the requirement that an applicant provide any information the commissioner may require, and provide that all application information be received in confidence, as provided, and not be subject to the Public Records Act.

Existing law requires that a life settlement broker provide the owner of a life insurance policy and the insured with at least all of specified disclosures in writing, prior to the signing of the life settlement contract by all parties. The disclosures include, but are not limited to, all estimates of the life expectancy of the insured which are obtained by the licensee in connection with the life settlement, unless such disclosure would violate California or federal privacy laws.

This bill would provide that the broker shall be required to provide the owner and the insured with only the specified disclosures, and would delete from the list of required disclosures the estimate of the life expectancy of the insured.

Existing law authorizes the commissioner to adopt rules and regulations reasonably necessary to govern life settlement transactions.

This bill would recast this provision to authorize the commissioner to adopt rules and regulations reasonably necessary to implement and enforce the express provisions of the act.

Existing law prohibits these provisions relating to life settlements from doing certain things, including, but not limited to, limiting the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against the wrongdoer.

This bill would clarify that the above-described prohibition is applicable to insurance law, and would prohibit these provisions, except as expressly provided, from establishing any authority for the commissioner to enforce any provision of any state securities law or any rule, order, or notice issued thereunder, or grant the authority for the commissioner to regulate the assignment, transfer, sale of a settled policy, or any other transaction involving a settled policy.

~~Existing law establishes the California Insurance Guarantee Association (CIGA) to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies. Existing law gives CIGA the ability to request the issuance of bonds by the California Infrastructure and Economic Development Bank to more expeditiously and effectively provide for the payment of covered claims arising from the insolvencies of insurance companies providing workers' compensation insurance. Existing law requires that any bonds that provide funds for covered claim obligations for workers' compensation claims be issued, as specified, prior to January 1, 2011.~~

~~This bill would extend the date for those bonds to be issued to January 1, 2013.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 10113.2 of the Insurance Code is amended*
- 2 *to read:*
- 3 10113.2. (a) This section applies to any person entering into,
- 4 brokering, or soliciting life settlements pursuant to this section and
- 5 Sections 10113.1 and 10113.3.

(b) (1) Except as provided in subparagraph (B) or (D), no person may enter into, broker, or solicit life settlements pursuant to Section 10113.1 unless that person has been licensed by the commissioner under this section. The person shall file an application for a license in the form prescribed by the commissioner, and the application shall be accompanied by a fee established by the commissioner. The license fees for a provider license shall be reasonable and sufficient to cover the costs incurred by the department to implement this act. The license and renewal fees for a broker shall be reasonable and sufficient to cover the costs incurred by the department to implement this act and shall not exceed the license and renewal fees established for an insurance producer who is acting as a life settlement broker. ~~The applicant shall provide any information the commissioner may require.~~ The commissioner may issue a license, or deny the application if, in his or her discretion, it is determined that it is contrary to the interests of the public to issue a license to the applicant. The reasons for a denial shall be set forth in writing. *All application information shall be received in confidence within the meaning of subdivision (d) of Section 6254 of the Government Code and is exempt from disclosure pursuant to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).*

(A) An individual acting as a broker under this section shall complete at least 15 hours of continuing education related to life settlements and life settlement transactions, as required and approved by the commissioner, prior to operating as a broker. This requirement shall not apply to a life insurance producer who qualifies under subparagraph (D).

(B) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate a life settlement contract on behalf of the owner without having to obtain a license as a broker.

(C) A person licensed to act as a viatical settlement broker or provider as of December 31, 2009, shall be deemed qualified for licensure as a life settlement broker or provider, and shall be subject to all the provisions of this article as if the person were originally licensed as a life settlement broker or provider.

1 (D) (i) A life insurance producer who has been duly licensed
2 as a life agent for at least one year or as a licensed nonresident
3 producer in this state for one year shall be deemed to meet the
4 licensing requirements of this section and shall be permitted to
5 operate as a broker.

6 (ii) Not later than 10 days from the first day of operating as a
7 broker, the life insurance producer shall notify the commissioner
8 that he or she is acting as a broker, on a form prescribed by the
9 commissioner, and shall pay any applicable fee to be determined
10 by the commissioner.

11 (iii) The fee established by the commissioner shall be reasonable
12 and sufficient to cover the costs incurred by the department to
13 implement this act, but shall not be in excess of the license and
14 renewal fees paid by a life insurance producer. The fee shall be
15 paid by the life insurance producer for each license term the
16 producer intends to operate as a broker. The fee shall be calculated
17 pursuant to Section 1750. The notification to the commissioner
18 shall include an acknowledgment by the life insurance producer
19 that he or she will operate as a broker in accordance with this act.

20 (iv) The insurer that issued the policy that is the subject of a life
21 settlement contract shall not be responsible for any act or omission
22 of a broker or provider arising out of, or in connection with, the
23 life settlement transaction, unless the insurer receives compensation
24 for the replacement of the life settlement contract for the provider
25 or broker.

26 (E) The commissioner shall review the examination for the
27 licensing of life insurance agents and may recommend any changes
28 to the examination to the department's curriculum committee in
29 order to carry out the purposes of this section and Sections 10113.1
30 and 10113.3.

31 (2) Whenever it appears to the commissioner that it is contrary
32 to the interests of the public for a person licensed pursuant to this
33 section to continue to transact life settlements business, he or she
34 shall issue a notice to the licensee stating the reasons therefor. If,
35 after a hearing, the commissioner concludes that it is contrary to
36 the interests of the public for the licensee to continue to transact
37 life settlements business, he or she may revoke the person's license,
38 or issue an order suspending the license for a period as determined
39 by the commissioner. Any hearing conducted pursuant to this
40 paragraph shall be in accordance with Chapter 5 (commencing

1 with Section 11500) of Part 1 of Division 3 of Title 2 of the
2 Government Code, except that the hearing may be conducted by
3 administrative law judges chosen pursuant to Section 11502 or
4 appointed by the commissioner, and the commissioner shall have
5 the powers granted therein.

6 (3) Each licensee shall owe and pay in advance to the
7 commissioner an annual renewal fee in an amount to be determined
8 by the commissioner pursuant to paragraph (1) of subdivision (b).
9 This fee shall be for each license year, as defined by Section 1629.

10 (4) Any licensee that intends to discontinue transacting life
11 settlements in this state shall so notify the commissioner, and shall
12 surrender its license.

13 (c) A life settlements licensee shall file with the department a
14 copy of all life settlement forms used in this state. No licensee may
15 use any life settlement form in this state unless it has been provided
16 in advance to the commissioner. The commissioner may disapprove
17 a life settlement form if, in his or her discretion, the form, or
18 provisions contained therein, are contrary to the interests of the
19 public, or otherwise misleading or unfair to the consumer. In the
20 case of disapproval, the licensee may, within 15 days of notice of
21 the disapproval, request a hearing before the commissioner or his
22 or her designee, and the hearing shall be held within 30 days of
23 the request.

24 (d) Life settlements licensees shall be required to provide any
25 applicant for a life settlement contract, at the time of application
26 for the life settlement contract, ~~all of~~ *only* the following disclosures
27 in writing and signed by the owner, in at least 12-point type:

28 (1) That there are possible alternatives to life settlements,
29 including, but not limited to, accelerated benefits options that may
30 be offered by the life insurer.

31 (2) The fact that some or all of the proceeds of a life settlement
32 may be taxable and that assistance should be sought from a
33 professional tax adviser.

34 (3) Consequences for interruption of public assistance as
35 provided by information provided by the State Department of
36 Health Care Services and the State Department of Social Services
37 under Section 11022 of the Welfare and Institutions Code.

38 (4) That the proceeds from a life settlement could be subject to
39 the claims of creditors.

1 (5) That entering into a life settlement contract may cause other
2 rights or benefits, including conversion rights and waiver of
3 premium benefits that may exist under the policy or certificate of
4 a group policy to be forfeited by the owner and that assistance
5 should be sought from a professional financial adviser.

6 (6) That a change in ownership of the settled policy could limit
7 the insured's ability to purchase insurance in the future on the
8 insured's life because there is a limit to how much coverage
9 insurers will issue on one life.

10 (7) That the owner has a right to rescind a life settlement contract
11 within 30 days of the date it is executed by all parties and the owner
12 has received all required disclosures, or 15 days from receipt by
13 the owner of the proceeds of the settlement, whichever is sooner.
14 Rescission, if exercised by the owner, is effective only if both
15 notice of rescission is given and the owner repays all proceeds and
16 any premiums, loans, and loan interest paid on account of the
17 provider within the rescission period. If the insured dies during
18 the rescission period, the contract shall be deemed to have been
19 rescinded subject to repayment by the owner or the owner's estate
20 of all proceeds and any premiums, loans, and loan interest to the
21 provider.

22 (8) That proceeds will be sent to the owner within three business
23 days after the provider has received the insurer or group
24 administrator's acknowledgment that ownership of the policy or
25 the interest in the certificate has been transferred and the
26 beneficiary has been designated in accordance with the terms of
27 the life settlement contract.

28 (9) The date by which the funds will be available to the owner
29 and the transmitter of the funds.

30 (10) The disclosure document shall include the following
31 language:

32
33 "All medical, financial, or personal information solicited or
34 obtained by a provider or broker about an insured, including
35 the insured's identity or the identity of family members, a
36 spouse, or a significant other may be disclosed as necessary
37 to effect the life settlement contract between the owner and
38 provider. If you are asked to provide this information, you will
39 be asked to consent to the disclosure. The information may be
40 provided to someone who buys the policy or provides funds

1 for the purchase. You may be asked to renew your permission
2 to share information every two years.”
3

4 (11) That the insured may be contacted by either the provider
5 or the broker or its authorized representative for the purpose of
6 determining the insured’s health status or to verify the insured’s
7 address. This contact is limited to once every three months if the
8 insured has a life expectancy of more than one year, and no more
9 than once per month if the insured has a life expectancy of one
10 year or less.

11 (12) Any affiliations or contractual relations between the
12 provider and the broker, and the affiliation, if any, between the
13 provider and the issuer of the policy to be settled.

14 (13) That a broker represents exclusively the owner, and not
15 the insurer or the provider or any other person, and owes a fiduciary
16 duty to the owner, including a duty to act according to the owner’s
17 instructions and in the best interest of the owner.

18 (14) The name, business address, and telephone number of the
19 broker.

20 (e) Prior to the execution of the life settlement contract by all
21 parties, the life settlement provider entering into a life settlement
22 contract with the owner shall provide, in a document signed by
23 the owner, the gross purchase price the life settlement provider is
24 paying for the policy, the amount of the purchase price to be paid
25 to the owner, the amount of the purchase price to be paid to the
26 owner’s life settlement broker, and the name, business address,
27 and telephone number of the life settlement broker. For purposes
28 of this section, “gross purchase price” means the total amount or
29 value paid by the provider for the purchase of one or more life
30 insurance policies, including commissions and fees.

31 (f) The broker shall provide the owner and the insured with-at
32 ~~least all of~~ the following disclosures, *and no other disclosures*, in
33 writing prior to the signing of the life settlement contract by all
34 parties. ~~The~~ These disclosures shall be clearly displayed in the
35 life settlement contract or in a separate document signed by the
36 owner:

37 (1) The name, business address, and telephone number of the
38 broker.

1 (2) A full, complete, and accurate description of all of the offers,
2 counteroffers, acceptances, and rejections relating to the proposed
3 life settlement contract.

4 (3) A disclosure of any affiliations or contractual arrangements
5 between the broker and any person making an offer in connection
6 with the proposed life settlement contract.

7 ~~(4) All estimates of the life expectancy of the insured which are~~
8 ~~obtained by the licensee in connection with the life settlement;~~
9 ~~unless such disclosure would violate any California or federal~~
10 ~~privacy laws.~~

11 ~~(5) The commissioner may consider any failure to provide the~~
12 ~~disclosures or rights described in this section as a basis for~~
13 ~~suspending or revoking a broker's or provider's license pursuant~~
14 ~~to paragraph (2) of subdivision (b).~~

15 (g) All medical information solicited or obtained by any person
16 soliciting or entering into a life settlement is subject to Article 6.6
17 (commencing with Section 791) of Chapter 1 of Part 2 of Division
18 1, concerning confidentiality of medical information.

19 (h) Except as otherwise allowed or required by law, a provider,
20 broker, insurance company, insurance producer, information
21 bureau, rating agency, or company, or any other person with actual
22 knowledge of an insured's identity shall not disclose the identity
23 of an insured or information that there is a reasonable basis to
24 believe that could be used to identify the insured or the insured's
25 financial or medical information to any other person unless the
26 disclosure is one of the following:

27 (1) It is necessary to effect a life settlement contract between
28 the owner and a provider and the owner and insured have provided
29 prior written consent to the disclosure.

30 (2) It is necessary to effectuate the sale of life settlement
31 contracts, or interests therein, as investments, provided the sale is
32 conducted in accordance with applicable state and federal securities
33 law and provided further that the owner and the insured have both
34 provided prior written consent to the disclosure.

35 (3) It is provided in response to an investigation or examination
36 by the commissioner or any other governmental officer or agency
37 or any other provision of law.

38 (4) It is a term or condition to the transfer of a policy by one
39 provider to another provider, in which case the receiving provider
40 shall be required to comply with the confidentiality requirements

1 of Article 6.6 (commencing with Section 791) of Chapter 1 of Part
2 of Division 1.

3 (5) It is necessary to allow the provider or broker or their
4 authorized representatives to make contacts for the purpose of
5 determining health status. For the purposes of this section, the term
6 “authorized representative” shall not include any person who has
7 or may have any financial interest in the settlement contract other
8 than a provider, licensed broker; further, a provider or broker shall
9 require its authorized representative to agree in writing to adhere
10 to the privacy provisions of this act.

11 (6) It is required to purchase stop loss coverage.

12 (i) In addition to other questions an insurance carrier may
13 lawfully pose to a life insurance applicant, insurance carriers may
14 inquire in the application for insurance whether the proposed owner
15 intends to pay premiums with the assistance of financing from a
16 lender that will use the policy as collateral to support the financing.

17 (1) If the premium finance loan provides funds which can be
18 used for a purpose other than paying for the premiums, costs, and
19 expenses associated with obtaining and maintaining the life
20 insurance policy and loan, the application may be rejected as a
21 prohibited practice under this act.

22 (2) If the financing does not violate paragraph (1), the existence
23 of premium financing may not be the sole criterion employed by
24 an insurer in a decision whether to reject an application for life
25 insurance. The insurance carrier may make disclosures to the
26 applicant, either on the application or an amendment to the
27 application to be completed no later than the delivery of the policy,
28 including, but not limited to, the following:

29
30 “If you have entered into a loan arrangement where the
31 policy is used as collateral, and the policy changes ownership
32 at some point in the future in satisfaction of the loan, the
33 following may be true:

34 “(A) A change of ownership could lead to a stranger owning
35 an interest in the insured’s life.

36 “(B) A change of ownership could in the future limit your
37 ability to purchase insurance on the insured’s life because
38 there is a limit to how much coverage insurers will issue on a
39 life.

1 “(C) You should consult a professional adviser since a
2 change in ownership in satisfaction of the loan may result in
3 tax consequences to the owner, depending on the structure of
4 the loan.”

5
6 (3) In addition to the disclosures in paragraph (2), the insurance
7 carrier may require the following certifications from the applicant
8 or the insured:

9
10 “(A) I have not entered into any agreement or arrangement
11 under which I have agreed to make a future sale of this life
12 insurance policy.

13 “(B) My loan arrangement for this policy provides funds
14 sufficient to pay for some or all of the premiums, costs, and
15 expenses associated with obtaining and maintaining my life
16 insurance policy, but I have not entered into any agreement
17 by which I am to receive consideration in exchange for
18 procuring this policy.

19 “(C) The borrower has an insurable interest in the insured.”

20
21 (j) Life insurers shall provide individual life insurance
22 policyholders with a statement informing them that if they are
23 considering making changes in the status of their policy, they
24 should consult with a licensed insurance or financial advisor. The
25 statement may accompany or be included in notices or mailings
26 otherwise provided to the policyholders.

27 (k) The commissioner may adopt rules and regulations
28 reasonably necessary to ~~govern life settlement transactions~~
29 *implement and enforce the express provisions of this act.*

30 (l) The commissioner may, whenever he or she deems it
31 reasonably necessary to protect the interests of the public, examine
32 the business and affairs of any licensee or applicant for a license.
33 The commissioner shall have the authority to order any licensee
34 or applicant to produce any records, books, files, or other
35 information as is reasonably necessary to ascertain whether or not
36 the licensee or applicant is acting or has acted in violation of the
37 law or otherwise contrary to the interests of the public. The
38 expenses incurred in conducting any examination shall be paid by
39 the licensee or applicant.

1 (m) The commissioner may investigate the conduct of any
2 licensee, its officers, employees, agents, or any other person
3 involved in the business of the licensee, or any applicant for a
4 license, whenever the commissioner has reason to believe that the
5 licensee or applicant for a license may have acted, or may be acting,
6 in violation of the law, or otherwise contrary to the interests of the
7 public. The commissioner may initiate an investigation on his or
8 her own, or upon a complaint filed by any other person.

9 (n) The commissioner may issue orders to licensees whenever
10 he or she determines that it is reasonably necessary to ensure or
11 obtain compliance with this section, or Section 10113.3. This
12 authority includes, but is not limited to, orders directing a licensee
13 to cease and desist in any practice that is in violation of this section,
14 or Section 10113.3, or otherwise contrary to the interests of the
15 public. Any licensee to which an order pursuant to this subdivision
16 is issued may, within 15 days of receipt of that order, request a
17 hearing at which the licensee may challenge the order.

18 (o) The commissioner may, after notice and a hearing at which
19 it is determined that a licensee has violated this section or Section
20 10113.3 or any order issued pursuant to this section, order the
21 licensee to pay a monetary penalty of up to ten thousand dollars
22 (\$10,000), which may be recovered in a civil action. Any hearing
23 conducted pursuant to this subdivision shall be in accordance with
24 Chapter 5 (commencing with Section 11500) of Part 1 of Division
25 3 of Title 2 of the Government Code, except that the hearing may
26 be conducted by administrative law judges chosen pursuant to
27 Section 11502 or appointed by the commissioner, and the
28 commissioner shall have the powers granted therein.

29 (p) Each licensed provider shall file with the commissioner on
30 or before March 1 of each year an annual statement in the form
31 prescribed by the commissioner. The information that the
32 commissioner may require in the annual statement shall include;
33 ~~but not be limited to,~~ only the total number, aggregate face amount,
34 and life settlement proceeds of policies settled during the
35 immediately preceding calendar year, together with a breakdown
36 of the information by policy issue year. ~~The annual statement shall~~
37 ~~also include, and~~ the names of the insurance companies whose
38 policies have been settled and the brokers that have settled those
39 policies, and that information shall be received in confidence within
40 the meaning of subdivision (d) of Section 6254 of the Government

1 Code and exempt from disclosure pursuant to the Public Records
2 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
3 of Title 1 of the Government Code). The annual statement shall
4 not include individual transaction data regarding the business of
5 life settlements ~~or information that there is a reasonable basis to~~
6 ~~believe could be used to identify the owner or the insured.~~

7 (q) No person who is not a resident of California may receive
8 or maintain a license unless a written designation of an agent for
9 service of process is filed and maintained with the commissioner.
10 The provisions of Article 3 (commencing with Section 1600) of
11 Chapter 4 of Part 2 *of Division 1* shall apply to life settlements
12 licensees as if they were foreign insurers, their license a certificate
13 of authority, and the life settlements a policy, and the commissioner
14 may modify the agreement set forth in Section 1604 accordingly.

15 (r) No person licensed pursuant to this section shall engage in
16 any false or misleading advertising, solicitation, or practice. In no
17 case shall a broker or provider, directly or indirectly, market,
18 advertise, solicit, or otherwise promote the purchase of a new
19 policy for the sole purpose of or with a primary emphasis on
20 settling the policy or use the words “free,” “no cost,” or words of
21 similar import in the marketing, advertising, soliciting, or otherwise
22 promoting of the purchase of a policy. The provisions of Article
23 6 (commencing with Section 780) and Article 6.5 (commencing
24 with Section 790) of Chapter 1 of Part 2 *of Division 1* shall apply
25 to life settlements licensees as if they were insurers, their license
26 a certificate of authority or producer’s license, and the life
27 settlements a policy, and the commissioner shall liberally construe
28 these provisions so as to protect the interests of the public.

29 (s) Any person who enters into a life settlement with a life
30 settlements licensee shall have the absolute right to rescind the
31 settlement within 30 days of the date it is executed by all parties
32 and the owner has received all required disclosures, or 15 days
33 from receipt by the owner of the proceeds of the settlement,
34 whichever is sooner, and any waiver or settlement language
35 contrary to this subdivision shall be void. Rescission, if exercised
36 by the owner, is effective only if both notice of rescission is given
37 and the owner repays all proceeds and any premiums, loans, and
38 loan interest paid on account of the provider within the rescission
39 period. If the insured dies during the rescission period, the contract
40 shall be deemed to have been rescinded subject to repayment by

1 the owner or the owner's estate of all proceeds and any premiums,
2 loans, and loan interest to the provider.

3 (t) Records of all consummated ~~transactions~~ and life settlement
4 contracts shall be maintained by the provider for three years after
5 the death of the insured and shall be available to the commissioner
6 for inspection during reasonable business hours.

7 (u) *The commissioner may consider any failure to provide the*
8 *disclosures or rights described in this section as a basis for*
9 *suspending or revoking a broker's or provider's license pursuant*
10 *to paragraph (2) of subdivision (b).*

11 ~~(u)~~
12 (v) A violation of this section is a misdemeanor.

13 SEC. 2. *Section 10113.3 of the Insurance Code is amended to*
14 *read:*

15 10113.3. (a) A provider entering into a life settlement contract
16 with any owner of a policy, wherein the insured is terminally ill,
17 shall first obtain the following:

18 (1) If the owner is the insured, a written statement from a
19 licensed attending physician that the owner is of sound mind and
20 under no constraint or undue influence to enter into a settlement
21 contract.

22 (2) A document in which the insured consents to the release of
23 his or her medical records to a provider, settlement broker, or
24 insurance producer and, if the policy was issued less than two years
25 from the date of application for a settlement contract, to the
26 insurance company that issued the policy.

27 (b) The insurer shall respond to a request for verification of
28 coverage submitted by a provider, settlement broker, or life
29 insurance producer not later than 30 calendar days of the date the
30 request is received. The request for verification of coverage must
31 be made on a form approved by the commissioner. The insurer
32 shall complete and issue the verification of coverage or indicate
33 in which respects it is unable to respond. In its response, the insurer
34 shall indicate whether, based on the medical evidence and
35 documents provided, the insurer intends to pursue an investigation
36 at this time regarding the validity of the insurance contract.

37 (c) Before or at the time of execution of the settlement contract,
38 the provider shall obtain a witnessed document in which the owner
39 consents to the settlement contract, represents that the owner has
40 a full and complete understanding of the settlement contract and

1 a full and complete understanding of the benefits of the policy,
2 acknowledges that the owner is entering into the settlement contract
3 freely and voluntarily, and, for persons with a terminal illness or
4 condition, acknowledges that the insured has a terminal illness and
5 that the terminal illness or condition was diagnosed after the policy
6 was issued.

7 (d) The insurer shall not unreasonably delay effecting change
8 of ownership or beneficiary with any life settlement contract
9 lawfully entered into in this state or with a resident of this state.

10 (e) If a settlement broker or life insurance producer performs
11 any of these activities required of the provider, the provider is
12 deemed to have fulfilled the requirements of this section.

13 (f) If a broker performs those verification of coverage activities
14 required of the provider, the provider is deemed to have fulfilled
15 the requirements of this section.

16 (g) Within 20 days after an owner executes the life settlement
17 contract, the provider shall give written notice to the insurer that
18 issued that insurance policy that the policy has become subject to
19 a life settlement contract. The notice shall be accompanied by the
20 documents required by subdivision (d) of Section 10113.2.

21 (h) All medical information solicited or obtained by any licensee
22 shall be subject to the applicable provision of state law relating to
23 confidentiality of medical information, if not otherwise provided
24 in this act.

25 (i) All life settlement contracts entered into in this state shall
26 provide that the owner may rescind the contract on or before 30
27 days after the date it is executed by all parties thereto, and the
28 owner has received all required disclosures, or 15 days from receipt
29 by the owner of the full payment of the proceeds as specified
30 below, whichever is sooner. Rescission, if exercised by the owner,
31 is effective only if both notice of the rescission is given, and the
32 owner repays all proceeds and any premiums, loans, and loan
33 interest paid on account of the provider within the rescission period.
34 If the insured dies during the rescission period, the contract shall
35 be deemed to have been rescinded subject to repayment by the
36 owner or the owner's estate of all proceeds and any premiums,
37 loans, and loan interest to the provider.

38 (j) Within three business days after receipt from the owner of
39 documents to effect the transfer of the insurance policy, the
40 provider shall pay the proceeds of the settlement to an escrow or

1 trust account managed by a trustee or escrow agent in a state or
2 federally chartered financial institution pending acknowledgment
3 of the transfer by the issuer of the policy. The trustee or escrow
4 agent shall be required to transfer the proceeds due to the owner
5 within three business days of acknowledgment of the transfer from
6 the insurer.

7 (k) Failure to tender the life settlement contract proceeds to the
8 owner by the date disclosed to the owner renders the contract
9 voidable by the owner for lack of consideration until the time the
10 proceeds are tendered to and accepted by the owner. A failure to
11 give written notice of the right of rescission hereunder shall toll
12 the right of rescission until 30 days after the written notice of the
13 right of rescission has been given.

14 (l) Any fee paid by a provider, party, individual, or an owner
15 to a broker in exchange for services provided to the owner
16 pertaining to a life settlement contract shall be computed as a
17 percentage of the offer obtained, not the face value of the policy.
18 Nothing in this section shall be construed as prohibiting a broker
19 from reducing the broker's fee below this percentage if the broker
20 so chooses.

21 (m) No person at any time prior to, or at the time of, the
22 application for, or issuance of, a policy, or during a two-year period
23 commencing with the date of issuance of the policy, shall enter
24 into a life settlement regardless of the date the compensation is to
25 be provided and regardless of the date the assignment, transfer,
26 sale, devise, bequest, or surrender of the policy is to occur.

27 (1) This prohibition shall not apply if the owner certifies to the
28 provider that the policy was issued upon the owner's exercise of
29 conversion rights arising out of a group or individual policy,
30 provided the total of the time covered under the conversion policy
31 plus the time covered under the prior policy is at least 24 months.
32 The time covered under a group policy must be calculated without
33 regard to a change in insurance carriers, provided the coverage
34 has been continuous and under the same group sponsorship.

35 (2) This prohibition shall not apply if the owner submits
36 independent evidence to the provider that one or more of the
37 following conditions have been met within the two-year period:

38 (A) The owner or insured is terminally ill.

39 (B) The owner or insured disposes of his or her ownership
40 interests in a closely held corporation, pursuant to the terms of a

1 buyout or other similar agreement in effect at the time the insurance
2 policy was initially issued.

3 (C) The owner's spouse dies.

4 (D) The owner divorces his or her spouse.

5 (E) The owner retires from full-time employment.

6 (F) The owner becomes physically or mentally disabled and a
7 physician determines that the disability prevents the owner from
8 maintaining full-time employment.

9 (G) A final order, judgment, or decree is entered by a court of
10 competent jurisdiction, on the application of a creditor of the
11 owner, adjudicating the owner bankrupt or insolvent, or approving
12 a petition seeking reorganization of the owner or appointing a
13 receiver, trustee, or liquidator to all or a substantial part of the
14 owner's assets.

15 (3) (A) Copies of the independent evidence required by
16 paragraph (2) shall be submitted to the insurer when the provider
17 submits a request to the insurer for verification of coverage. The
18 copies shall be accompanied by a letter of attestation from the
19 provider that the copies are true and correct copies of the
20 documents received by the provider. Nothing in this section shall
21 prohibit an insurer from exercising its right to contest the validity
22 of any policy.

23 (B) If the provider submits to the insurer a copy of independent
24 evidence provided for in subparagraph (A) of paragraph (2) when
25 the provider submits a request to the insurer to effect the transfer
26 of the policy to the provider, the copy shall be deemed to establish
27 that the settlement contract satisfies the requirements of this
28 section.

29 (4) This prohibition shall apply only to policies issued on or
30 after the effective date of this section.

31 (n) An insurer shall not:

32 (1) Engage in any transaction, act, or practice that restricts,
33 limits, or impairs the lawful transfer of ownership, change of
34 beneficiary, or assignment of a policy.

35 (2) Make any false or misleading statement for the purpose of
36 dissuading an owner or insured from a lawful life settlement
37 contract.

38 (o) No person providing premium financing shall receive any
39 proceeds, fees, or other consideration from the policy or owner of
40 the policy that are in addition to the amounts required to pay

1 principal, interest, and any reasonable costs or expenses incurred
2 by the lender or borrower in connection with the premium finance
3 agreement, except for the event of a default, unless either the
4 default on the loan or transfer of the policy occurs pursuant to an
5 agreement or understanding with any other person for the purpose
6 of evading regulation under this act.

7 (p) If there is more than one owner on a single policy, and the
8 owners are residents of different states, the life settlement contract
9 shall be governed by the law of the state in which the owner having
10 the largest percentage ownership resides or, if the owners hold
11 equal ownership, the state of residence of one owner agreed upon
12 in writing by all of the owners. The law of the state of the insured
13 shall govern in the event that equal owners fail to agree in writing
14 upon a state of residence for jurisdictional purposes.

15 (q) A provider from this state who enters into a life settlement
16 contract with an owner who is a resident of another state that has
17 enacted statutes or adopted regulations governing life settlement
18 contracts shall be governed in the effectuation of that life settlement
19 contract by the statutes and regulations of the owner's state of
20 residence. If the state in which the owner is a resident has not
21 enacted statutes or regulations governing life settlement contracts,
22 the provider shall give the owner notice that neither state regulates
23 the transaction upon which he or she is entering. For transactions
24 in those states, however, the provider is to maintain all records
25 required if the transactions were executed in the state of residence.
26 The forms used in those states need not be approved by the
27 department.

28 (r) If there is a conflict in the laws that apply to an owner and
29 a purchaser in any individual transaction, the laws of the state that
30 apply to the owner shall take precedence and the provider shall
31 comply with those laws.

32 (s) It is a fraudulent life settlement act and a violation of this
33 section for any person to do any of the following, or any of the
34 acts listed in subdivision (g) of Section 10113.1:

35 (1) Enter into a life settlement contract if a person knows or
36 reasonably should have known that the life insurance policy was
37 obtained by means of a false, deceptive, or misleading application
38 for the policy.

1 (2) Engage in any transaction, practice, or course of business if
2 a person knows or reasonably should have known that the intent
3 was to avoid the notice requirements of this section.

4 (3) Engage in any fraudulent act or practice in connection with
5 any transaction relating to any settlement involving an owner who
6 is a resident of this state.

7 (4) Fail to provide the disclosures or file the required reports
8 with the commissioner as required by this act.

9 (5) Issue, solicit, or market, the purchase of a new life insurance
10 policy for the purpose of, or with a primary emphasis on, settling
11 the policy.

12 (6) Enter into a premium finance agreement with any person or
13 agency, or any person affiliated with a person or agency that is
14 prohibited under subdivision (o).

15 (7) With respect to any settlement contract or insurance policy
16 and a broker, knowingly solicit an offer from, effectuate a life
17 settlement contract with, or make a sale to any provider, financing
18 entity, or related provider trust that is controlling, controlled by,
19 or under common control with a broker, unless the relationship
20 has been fully disclosed to the owner.

21 (8) With respect to any life settlement contract or insurance
22 policy and a provider, knowingly enter into a life settlement
23 contract with an owner, if, in connection with a life settlement
24 contract, anything of value will be paid to a broker that is
25 controlling, controlled by, or under common control with a provider
26 or the financing entity, or related provider trust that is involved in
27 a settlement contract, unless the relationship has been fully
28 disclosed to the owner.

29 (9) With respect to a provider, enter into a life settlement
30 contract unless the life settlement promotional, advertising, and
31 marketing materials, as may be prescribed by regulation, have
32 been filed with the commissioner. In no event shall any marketing
33 materials expressly reference that the insurance is “free” for any
34 period of time. The inclusion of any reference in the marketing
35 materials that would cause an owner to reasonably believe that the
36 insurance is free for any period of time shall be considered a
37 violation of this act; or with respect to any life insurance producer,
38 insurance company, broker, or provider make any statement or
39 representation to the applicant or policyholder in connection with
40 the sale or financing of a life insurance policy to the effect that the

1 insurance is free or without cost to the policyholder for any period
2 of time unless provided in the policy.

3 (t) Life settlement contracts and applications for life settlement
4 contracts, regardless of the form of transmission, shall contain the
5 following statement or a substantially similar statement:

6
7 “Any person who knowingly presents false information in an
8 application for insurance or for a life settlement contract may
9 be subject to criminal or civil liability.”

10
11 (1) The lack of a statement as required by this subdivision does
12 not constitute a defense in any prosecution for a fraudulent life
13 settlement act.

14 (2) This act shall not:

15 (A) Preempt the authority or relieve the duty of other law
16 enforcement or regulatory agencies to investigate, examine, and
17 prosecute suspected violations of law.

18 (B) Preempt, supersede, or limit any provision of any state
19 securities law or any rule, order, or notice issued thereunder.

20 (C) Prevent or prohibit a person from disclosing voluntarily
21 information concerning life settlement fraud to a law enforcement
22 or regulatory agency other than the insurance department.

23 (D) Limit the powers granted elsewhere by the laws of this state
24 to the commissioner or an insurance fraud unit to investigate and
25 examine possible violations of *insurance* law and to take
26 appropriate action against wrongdoers.

27 (E) *Except as expressly provided for in this act, establish any*
28 *authority for the commissioner to enforce any provision of any*
29 *state securities law or any rule, order, or notice issued thereunder;*
30 *or grant the authority for the commissioner to regulate the*
31 *assignment, transfer, sale of a settled policy, or any other*
32 *transaction involving a settled policy.*

33 (u) A provider lawfully transacting business in this state prior
34 to the effective date of this act may continue to do so, pending
35 approval or disapproval of that person’s application for a license
36 as long as the application is filed with the commissioner not later
37 than 30 days after publication by the commissioner of an
38 application form and instructions for licensure of providers. If the
39 publication of the application form and instructions is prior to the
40 effective date of this chapter, then the filing of the application shall

1 not be later than 30 days after the effective date of this act. During
2 the time that an application is pending with the commissioner, the
3 applicant may use any form of life settlement contract that has
4 been filed with the commissioner pending approval thereof,
5 provided that the form is otherwise in compliance with the
6 provisions of this act. Any person transacting business in this state
7 under this provision shall be obligated to comply with all other
8 requirements of this act. A person who has lawfully acted as a
9 broker and negotiated life settlement contracts between any owner
10 residing in this state and one or more providers for at least one
11 year immediately prior to the effective date of this act may continue
12 to do so pending approval or disapproval of that person's
13 application for a license, as long as the application is filed with
14 the commissioner not later than 30 days after publication by the
15 commissioner of an application form and instructions for licensure
16 of brokers. If the publication of the application form and
17 instructions is prior to the effective date of this chapter, then the
18 filing of the application shall not be later than 30 days after the
19 effective date of this act. Any person transacting business in this
20 state under this provision shall be obligated to comply with all
21 other requirements of this act.

22 SEC. 3. *The Legislature finds and declares that Section 1 of*
23 *this act, which amends Section 10113.2 of the Insurance Code,*
24 *imposes a limitation on the public's right of access to the meetings*
25 *of public bodies or the writings of public officials and agencies*
26 *within the meaning of Section 3 of Article I of the California*
27 *Constitution. Pursuant to that constitutional provision, the*
28 *Legislature makes the following findings to demonstrate the interest*
29 *protected by this limitation and the need for protecting that*
30 *interest:*

31 (a) *There is a compelling interest in adequately regulating the*
32 *life settlement industry to protect consumers.*

33 (b) *That interest is promoted by encouraging the life settlement*
34 *industry to make full and thorough disclosure of information to*
35 *the Insurance Commissioner by providing confidentiality for that*
36 *information as specified in subdivision (b) of Section 10113.2 of*
37 *the Insurance Code.*

38 ~~SECTION 1. Section 1063.75 of the Insurance Code is~~
39 ~~amended to read:~~

1 1063.75.— Any bonds issued to provide funds for covered claim
2 obligations for workers' compensation claims shall be issued prior
3 to January 1, 2013, in an aggregate principal amount outstanding
4 at any one time not to exceed \$1.5 billion, and any bonds issued
5 or issued to refund bonds shall not have a final maturity exceeding
6 20 years from the date of issuance. The bonds shall be issued at
7 the request of CIGA, shall be in the form, shall bear the date or
8 dates, and shall mature at the time or times as the indenture
9 authorized by the request may provide. The bonds may be issued
10 in one or more series, as serial bonds or as term bonds, or as a
11 combination thereof, and, notwithstanding any other provision of
12 law, the amount of principal of, or interest on, bonds maturing at
13 each date of maturity need not be equal. The bonds shall bear
14 interest at the rate or rates, variable or fixed or a combination
15 thereof, be in the denominations, be in the form, either coupon or
16 registered, carry the registration privileges, be executed in the
17 manner, be payable in the medium of payment at the place or places
18 within or without the state, be subject to the terms of redemption,
19 contain the terms and conditions, and be secured by the covenants
20 as the indenture may provide. The indenture may provide for the
21 proceeds of the bonds and funds securing the bonds to be invested
22 in any securities and investments, including investment agreements,
23 as specified therein. CIGA may enter into or authorize any ancillary
24 obligations or derivative agreements as it determines necessary or
25 desirable to manage interest rate risk or security features related
26 to the bonds. The bonds shall be sold at public or private sale by
27 the Treasurer at, above, or below the principal amount thereof, on
28 the terms and conditions and for the consideration in the medium
29 of payment that the Treasurer shall determine prior to the sale.